



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:)
Sanderson, *et al.*)
Serial No.: 09/818,975) Art Unit: 2877
Filed: March 27, 2001) Examiner: Mooney, Michael P.
For: LOSS COMPENSATING OPTICAL) Docket No.: 321903.1010
SPLITTER)

PETITION TO REVIVE ABANDONED APPLICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In regard to the above-identified application, the assignee hereby petitions the
Commissioner to revive the application pursuant to 37 C.F.R. §1.137(b).

It is not believed that extensions of time or fees for net addition of claims are required,
beyond those which may otherwise be provided for in documents accompanying this paper.
However, in the event that additional extensions of time are necessary to allow consideration of this
paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required
therefor (including fees for net addition of claims) are hereby authorized to be charged to Thomas,
Kayden, Horstemeyer, & Risley, L.L.P. Deposit Account No. 20-0778.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States
Postal Service as First Class Mail in an envelope, with sufficient postage,
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REMARKS

An Office Action requiring restriction to one group of claims was mailed on November 18, 2003. As indicated in the accompanying Declaration by Lelon Wayne Sanderson, it appears that the assignee, Verilink, Corp., intentionally failed to respond to the Office Action. Thus, the application became abandoned on May 18, 2004, in view of the five month extension of time request submitted herewith. As indicated in the Declaration, the inventors were not aware of Verilink's decision to stop prosecuting the instant application and did not become aware of the Office Action until after the abandonment date. Upon becoming aware of the foregoing, Lelon Wayne Sanderson promptly took control of the case by having Verilink execute an assignment of the application to him and then responded to the outstanding Office Action, as indicated in the accompanying Declaration and the attached Response. Lelon Wayne Sanderson, as the assignee of the entire right title and interest in the instant application, requests that the application be revived pursuant to 37 C.F.R. §1.137(b).

In this regard, 37 C.F.R. §1.137(b) allows the Patent Office to revive a previously abandoned application “If the delay in reply by *applicant* or patent owner was unintentional.” (Emphasis added). Further, 37 C.F.R. §1.41(b) provides “Unless the contrary is indicated the word ‘applicant’ when used in these sections refers to the inventor or joint inventors who are applying for a patent, or the person mentioned in SS 1.42, 1.43 or 1.47 who is applying for a patent in place of the inventor.” Thus, it is believed that the entire delay in filing the required reply from the due date of May 18, 2004, until the filing of this petition was unintentional by “applicant,” which should be construed to mean “the inventor or joint inventors” of the instant application.

Accordingly, it is respectfully requested that the instant application be revived pursuant to
37 C.F.R. §1.137(b).

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

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